IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11186 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RANJITSINH HIMATSINH GOHIL - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

==========

Appearance :
MR HRIDAY BUCH for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3, 5.2.1, 5.2.2, 5.2.3, 5.2.4,5.2.5 - 6.
None for Respondent(s) : 4 - 5.
MR AJ PATEL for Respondent(s) : 4.2.1,4.2.2
UNSERVED-WANT OF TIM for Respondent(s) : 4.2.3

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 18/08/2006

ORAL JUDGMENT

Notice was already issued for final disposal and, therefore, the matter is finally heard today.

The petitioner has preferred the petition for challenging the order passed by the Deputy Collector,

its confirmation thereof by the Collector as well as by the State Government, whereby the entry based on the registered sale deed is cancelled.

Heard Mr. Buch for the petitioner. Mr. Mengde, learned A.G.P. for the State authorities and Mr. A.J. Patel for the contesting respondents nos. 4/1, 4/2 and 4/3. The said respondents are stated to have been served but they have chosen not to appear.

Upon hearing the learned advocates appearing for both the sides, it appears that there is no dispute on the point that the entry came to be mutated in the revenue record based on the registered sale deed in favour of the petitioner. However, the revenue authorities have proceeded on the basis that as the exact demarcation of the land of the family inter se amongst the co-sharer/co-owner was not identified, the entry could not have been mutated. There is also no dispute on the point that the petitioner has preferred Suit No. 49/2000 in the Court of Civil Judge (Senior Division) Vadodara for protecting the possession of the land and the said suit is pending.

It is well settled that the revenue entries are having value only for fiscal purpose and more particularly for the purpose of recovery of revenue and it neither confers any right or title over the property, nor does it take away the right or title in the property which otherwise cannot be available under the law. It is also well settled that the revenue entries are required to be entered in the record if they pertain to the registered sale deed of the land in question leaving the parties to resort

to appropriate remedies as may be permissible in law before the appropriate civil court.

In the present case, the entries came to be mutated as back as in the year 1984 based on the registered sale deed and the respondent no. 4 or the legal heirs of the respondent no.4 objecting to the entry can raise all the contentions as available in Civil Suit No. 49/2000. The entry pertaining to the sale deed can be allowed to remain. Therefore it appears that the entries can be allowed to remain on the revenue record with the clarification that Civil Suit No. 49/2000 is pending in the Civil Court pertaining to the property and the entry is made subject to the final outcome of the proceedings of Civil Suit No. 49/2000. The position of law is otherwise well settled on the said aspects and the reference may be made to the decision of the Court in the case of JHAVERBHAI SAVJIBHAI PATEL Vs KANCHABEN NATHUBHAI PATEL & ORS reported at 2005(3) GLR 2233.

It may also be recorded that the learned Counsel Mr. Buch appearing for the petitioner as well as the learned Counsel for the contesting respondent Mr. A.J. Patel are in agreement if the disputed entry is allowed to continue in the revenue record with a clarification of pendency of the Civil Suit leaving the parties to agitate their rights in the property in the proceedings of the Civil Suit.

In view of the aforestated, the orders of the Deputy Collector, its confirmation thereof by the

Collector and the State Government are quashed and set aside to the extent that the entry Nos. 1842, 1843 & 1844 shall continue on the revenue record but with the clarification that Civil Suit No. 49/2000 preferred by the petitioner pending in the Court of Civil Judge (Senior Division), Vadodara and the entries shall continue to remain in the revenue record subject to the outcome of the proceedings of the Civil Suit. It is clarified that both the sides shall be at liberty to agitate their rights in the property in the proceedings of Civil Suit No. 49/2000 pertaining to the rights in the property which is subject matter of the Civil Suit and the Civil Court shall be at liberty to take independent view of the matter without being influenced in any manner by any of the observation made by this Court in the present order or by the revenue authority. The petition is partly allowed. Considering the facts and circumstances, there shall be no order as to costs. Notice is discharged.

(JAYANT PATEL, J.)

siji